

Document Log

| From | | To | |
|---|--|-----------------------------|--|
| Kathleen Mayo/R5/USEPA/US | | Linda Holst/R5/USEPA/US@EPA | |
| CC | | BCC | |
| David Pfeifer/R5/USEPA/US@EPA Christine Wagener/R5/USEPA/US@EPA Willie Harris/R5/USEPA/US@EPA | | | |
| Subject | | Date/Time | |
| Update: Bad River WQS | | 01/11/2011 04:29 PM | |
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Document Body

Thanks the clarifications. I spoke with the Tribe after I read your messages and they indicated the following:

- Erv Soulier, Natural Resources Director, was thinking of asking for a conference call with Linda, because the amount of WQS changes they had to discuss with the Tribal Council was making the Council reluctant to move forward with the WQS program.
- Tribal staff mentioned the following recent work: changes to the ammonia criteria, pulling out the sulfate numeric and replacing it with narratives, mixing zones, subcategorizing aquatic life uses. [**Note:** I think the Director just wanted a better feel for how significant the issues were, and whether they were serious enough to prevent them moving forward with the public notice]
- I explained that these aren't issues that should discourage them from having a WQS program; however I also explained that EPA may ask the Tribe to remove troublesome items right up until right before Tribal Council adoption. I gave the examples with LDF (perchlorate, 2,4-D, etc.) and said it's not uncommon for it to happen so be prepared.
- The Tribe also did not like having multiple emails of comments coming from different EPA offices. They indicated they'd received separate emails of comments from WQB, ORC and NPDES and it was very confusing for them on how to respond, and who needed the response.
- The Tribe has set a goal of publishing the WQS public notice in the newspaper by early February, and scheduling the public hearing.
- The Tribe may try to speed up the submittal process by hiring a contractor to do their Responsiveness Summary for the public comments.
- Erv's staff feels that now that we're all coming to the conclusion that their WQS can potentially be public-noticed soon, an email summarizing resolution of this problem will likely suffice, rather than a conference call with Linda or Dave.

Let me know if you'd like to respond back to Erv Soulier, or if you'd like IEO to do it. Thanks!

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| Linda Holst | We would not approve a State or Tribal WQS pa... | 01/11/2011 12:07:52 PM |
|-------------|--|------------------------|

From: Linda Holst/R5/USEPA/US
To: Barbara Wester/R5/USEPA/US@EPA
Cc: Christine Wagener/R5/USEPA/US@EPA, David Pfeifer/R5/USEPA/US@EPA, Harris.Willie@epa.gov, John Colletti/R5/USEPA/US@EPA, Kathleen Mayo/R5/USEPA/US@EPA, Kawakami.Cynthia@epa.gov, Norling.Francine@epa.gov, Robie Anson/R5/USEPA/US@EPA, Wester.Barbara@epa.gov
Date: 01/11/2011 12:07 PM
Subject: Re: Fw: Bad River will move to public notice on WQS

We would not approve a State or Tribal WQS package just to meet a commitment to HQ. These are internal commitments to HQ that we have to project a year or more ahead of time. We do the best we can to meet them, but believe me, we focus on whether the rules meet the CWA and federal regulatory requirements. That is why Christine and others have been pointing out to the Tribe where their rules need to be revised so that when they come in, all critical issues were already resolved and we can approve the rules. I believe the critical issues have been resolved. Right, Chris or Dave?

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| Barbara Wester | Kathy - I don't want to step into the political real... | 01/11/2011 11:40:33 AM |
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From: Barbara Wester/R5/USEPA/US
To: Kathleen Mayo/R5/USEPA/US@EPA
Cc: Christine Wagener/R5/USEPA/US@EPA, David Pfeifer/R5/USEPA/US@EPA, Harris.Willie@epa.gov, John Colletti/R5/USEPA/US@EPA, Kawakami.Cynthia@epa.gov, Linda Holst/R5/USEPA/US@EPA, Norling.Francine@epa.gov, Robie Anson/R5/USEPA/US@EPA, Wester.Barbara@epa.gov
Date: 01/11/2011 11:40 AM
Subject: Re: Fw: Bad River will move to public notice on WQS

Kathy - I don't want to step into the political realm here or further step on toes, and EPA may have targeted an approval of Bad River's WQS for a certain FY or date, but legally EPA has an absolute obligation to ensure that all WQS submittals meet regulatory requirements. If EPA feels that a WQS submittal is not acceptable, it is not obligated to approve, even if that submittal is included in some target number. I would avoid creating any impression inside or outside EPA that EPA has an obligation to approve any WQS submittal. Barbara

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| Kathleen Mayo | Christine, I'm sorry if my message made you fee... | 01/11/2011 10:45:31 AM |
|---------------|--|------------------------|

From: Kathleen Mayo/R5/USEPA/US
To: Christine Wagener/R5/USEPA/US@EPA, Linda Holst/R5/USEPA/US@EPA
Cc: David Pfeifer/R5/USEPA/US@EPA, Harris.Willie@epa.gov, Kawakami.Cynthia@epa.gov, Norling.Francine@epa.gov, Robie Anson/R5/USEPA/US@EPA, Wester.Barbara@epa.gov, John Colletti/R5/USEPA/US@EPA
Date: 01/11/2011 10:45 AM
Subject: Re: Fw: Bad River will move to public notice on WQS

Christine, I'm sorry if my message made you feel bad in any way!! I know WQB is really swamped with work because you're all such great technical people. I mostly just wanted to know if any remaining comments can be conveyed during the public hearing process? I wasn't sure if any new major issues had emerged that I wasn't aware of when I advised them to go to public notice before I left WQB. Let me know the answer to that question and I'll get back to the Director, Erv Soulier. If there are major "stopper" issues and I need to fill Erv in on those issues, give me a call and I'd be happy to help.

If it's just a casual back and forth kind of thing going on via email, be mindful that WQB is on the hook to

approve this Tribe's WQS in FY2011 (if I'm remembering our national commitments correctly). By my estimations, you're running out of time right now to be able to accomplish that. Just a quick back track of milestones shows this:

- WQS approval by September means it has to come in to WQB by July.
- Responding to comments after public hearing, and developing the responsiveness summary, often takes about 6 months for a Tribe - so counting back from a July submission date, the Tribe should have completed their public hearing by approximately end of January, 2011.
- Public hearing and WQS must be available for viewing for 45 days, which means it should have happened in December, 2010.

I always think everything is possible, especially if the Tribe can shorten the six month period of time and get done in 4 months! I would definitely be pushing them, however, at this point to public notice the WQS, post them on their website and get moving on the planning for the hearing. Let me know if you need me to do anything further.

Thanks,

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|-------------------|---|------------------------|
| Christine Wagener | Linda and Dave, The Bad River Tribe received T... | 01/10/2011 11:58:55 AM |
|-------------------|---|------------------------|

From: Christine Wagener/R5/USEPA/US
To: Linda Holst/R5/USEPA/US@EPA, David Pfeifer/R5/USEPA/US@EPA
Cc: Robie Anson/R5/USEPA/US@EPA, Wester.Barbara@epa.gov, Kawakami.Cynthia@epa.gov, Norling.Francine@epa.gov, Harris.Willie@epa.gov, Bell.BrianC@epa.gov, Beaton.Morris@epa.gov, Colletti.John@epa.gov, Kathleen Mayo/R5/USEPA/US
Date: 01/10/2011 11:58 AM
Subject: Re: Fw: Bad River will move to public notice on WQS

Linda and Dave,

The Bad River Tribe received Tribal Council approval to submit to for public comment last week.

The Tribe has, and has had, the last of our comments for over a week now. Those comments were initially transmitted to them in November, but they've continued to ask for guidance. They made considerable changes to the document since I acquired responsibility for it in June 2010, on their own accord, and they have made personnel changes as well. When they stop asking for input, I will stop giving it.

The last draft "review," according to the WQSTS, began on 3/09/09. As far as I know, I was still working full time in Louisiana. I was presented with my first copy of the BR WQS in April of last year, about a month or two before I attended WQS Academy. Kathy Mayo asked for my inputs then, and we shared these comments with Bad River in May.

I have at least 80 e-mails on record between myself and Bad River personnel, the last of which came in on January 6th. Prior to this, I made a choice during this process not to drop other things assigned to me (**see below) for something that is not a suspense item, given that the document has been in our system

as a "draft" since 2009.

[* *wild rice issues, EIS's, "mining team," sulfate standards, 106 reviews, GLRI Projects and QAPPS, variances, and other items Dave sees fit to ask for assistance on].

If you feel my performance on this has been less than satisfactory, please advise.

Chris Wagener

Christine M. Wagener, Ph.D.
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312-886-0887
U.S. EPA, Region 5
Water Quality Branch (WQ-16J)
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Chicago, IL 60604

Linda Holst

The Tribe is complaining, "EPA is constantly sub...

01/10/2011 09:31:01 AM

From: Linda Holst/R5/USEPA/US
To: David Pfeifer/R5/USEPA/US@EPA, Robie Anson/R5/USEPA/US@EPA, Christine Wagener/R5/USEPA/US@EPA
Date: 01/10/2011 09:31 AM
Subject: Fw: Bad River will move to public notice on WQS

The Tribe is complaining, "EPA is constantly submitting new information which [they] are to add to [their] standards. Can folks fill me in on what and how much we've been sending to Bad River? They want to move forward with their public comment period. Kathy is asking me if we can provide any remaining comments to the Tribe during their 45-day public comment period?

----- Forwarded by Linda Holst/R5/USEPA/US on 01/10/2011 09:27 AM -----

From: Kathleen Mayo/R5/USEPA/US
To: Holst.Linda@epa.gov
Cc: Pfeifer.David@epa.gov, Wagener.Christine@epa.gov, Wester.Barbara@epa.gov, Kawakami.Cynthia@epa.gov, Anson.Robie@epa.gov, Norling.Francine@epa.gov, Harris.Willie@epa.gov, Bell.Brianc@epa.gov, Beaton.Morris@epa.gov, Colletti.John@epa.gov
Date: 01/07/2011 02:16 PM
Subject: Bad River will move to public notice on WQS

Linda,

I'm forwarding a message from the Bad River Tribe's Natural Resources Director, Ervin Soulier. The Tribe is very frustrated with the length of time they've had to delay their public participation process on their WQS.

Recently, they've been caught in sort of a tough situation of having to provide a 401 certification on the Pesticide General Permit (PGP), without having EPA-approved WQS yet. They definitely have the authority to certify due to their approved 303/401 TAS application, and EPA R5 and HQ asked them to do it. It's been a time-consuming situation, however, for them to figure out how to provide a meaningful certification without their approved WQS. ORC, NPDES and IEO have helped them as much as possible these past few months to get the job done.

Really, the WQS do not have to be "perfect" before the public comment period because they will likely change significantly after the public hearing based upon all public comments received. Their WQS only need to be "perfect" for EPA, AFTER the public hearing and BEFORE adoption under tribal law by the

Tribal Council. In the past, Francine and I have even gotten a Tribe to pull out items of concern right before adoption by the Tribal Council.

The Tribe wishes to avoid similar challenging situations like the 401 cert for the PGP in the near future, so they are planning to move forward with their public hearing on the draft WQS. Can WQB provide any remaining comments and concerns during the Tribe's 45-day public comment period? Let me know if there are other concerns that I'm not aware of and I'll try to help as much as possible. Thanks.

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-----Forwarded by Kathleen Mayo/R5/USEPA/US on 01/07/2011 01:55PM -----

To: Kathleen Mayo/R5/USEPA/US@EPA
From: Ervin Soulier <nrdirector@badriver-nsn.gov>
Date: 01/06/2011 09:40AM
Subject: RE: REMINDER: January IEO/WI Tribes call Thursday 1/6 at 11:00

Kathy,

While the Department has been struggling with finalizing our water quality standards, EPA is constantly submitting new information which we are to add to our standards. I remember when you were still in the water office you told us we were good to go. Now we are being buried with this extra information which makes us hesitant to proceed. I told Naomi that when we finalize our sulfate standard in the next couple of weeks we should tell EPA to submit their additional information during the comment period where we would consider it. How about passing this idea along?

From: Mayo.Kathleen@epamail.epa.gov [mailto:Mayo.Kathleen@epamail.epa.gov]
Sent: Wednesday, January 05, 2011 3:05 PM
To: Dir253@aol.com; Linda.katchenago@mohican-nsn.gov; Ervin Soulier; Naomi Tillison; ddtyrolt@cheqnet.net; lawrenced@fcpotawatomi.com; Carol.Rollins@ho-chunk.com; Kevin.Gunderson@ho-chunk.com; dmayo@ldftribe.com; gschuettpelz@mitw.org; tinavz30@newnorth.net; LMIOTKE@oneidanation.org; PPELKY1@oneidanation.org; katies@stcroixtribalcenter.com; jmears@oneidanation.org; Nate.Guldan@fcpotawatomi.com; ldfbrownfields@verizon.net; natalene.cummings@fcpotawatomi-nsn.gov; greg.bunker@mohican-nsn.gov; Luke.Hennigan@mohican-nsn.gov; Jason Ritter; CWHEELLOC@oneidanation.org; Pamela Roberts; brnrrecp@badriver.com; sara.schmidt@ho-chunk.com; Randy.Poelma@ho-chunk.com; brettmc@centurytel.net; jpyatskowit@mitw.org; bob.frank@mohican-nsn.gov; melonee.montano@redcliff-nsn.gov; lawrence.daniels@fcpotawatomi-nsn.gov; gwsurfacewater@gmail.com; romanscced@yahoo.com;

MFINNEY@oneidanation.org; anthonyh@stcroixtribalcenter.com; hooverb2003@yahoo.com; dallen@ldftribe.com; t.allen91@yahoo.com; villagebum@gmail.com; larmagost@redcliff-nsn.gov; Cory.Wallschlaeger@mohican-nsn.gov; jdpyskowitz@mitw.org; sarahs@stcroixtribalcenter.com; NRPC@badriver.com; LMANTHE@oneidanation.org; ginny.terrio@mohican-nsn.gov; vflowers@oneidanation.org; echapman@ldftribe.com; mdanforj@oneidanation.org; rhill7@oneidanation.org; pninham@oneidanation.org
Cc: mack.barbara@epa.gov; harris.Willie@epa.gov; mulford.eloise@epa.gov; fairbanks.Ed@epa.gov; manville.jennifer@epa.gov; bright.fayette@epa.gov; Sullivan, John R - DNR (Jack); William.Christianson@wisconsin.gov; ambutas.Kestutis@epa.gov; foreste.paulette@epa.gov; mayo.kathleen@epa.gov
Subject: REMINDER: January IEO/WI Tribes call Thursday 1/6 at 11:00

HI All,

Just a reminder of our call tomorrow at 11:00. Please join if you have time. Feel free to share with others that might be interested as well. Talk to you tomorrow!

January IEO/WI Tribes Conference call (first Thursday of each month)

Date: 01/06/11

Time: 11:00-12:00

Conference call #: 866-299-3188, Code 312-886-6875

Agenda for IEO/WI Tribes call

- 1) Healthy Homes; info and training session, 10 min. (Fayette Bright, Air Division)
- 2) Climate Change discussion/presentation, 20-30 min. (Jack Sullivan, Director, Science Services, WIDNR)
- 3) Tribal Science Council update (Jeff Mears, Oneida)
- 4) IEO Updates (Kathy, Casey, Ella, Paulette):
 - *R5 IEO Director position
 - *WI Tribal Liaison - Repost
 - *Grants Consistency Workgroup
 - *Consultation Workgroup
 - * PPG Guidance

*MMTI

*5)Announcements

*Training - national tribal water quality standards session here in R5 - selecting locations

*WI Tribal Caucus portion of WTCAC is March 9th (not the 7th!)

*Other meetings

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